

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

LEONARDO SIMPKINS,

Petitioner,

v.

Case No: 5:23-cv-147-WFJ-PRL

SECRETARY, FLORIDA DEPARTMENT  
OF CORRECTIONS,

Respondent.

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**ORDER**

Before the Court is Petitioner Leonardo Simpkins' *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, Dkt. 1. The Secretary of the Florida Department of Corrections ("Respondent") has filed a Motion to Dismiss for Lack of Jurisdiction, Dkt. 12, to which Petitioner has replied, Dkt. 13. Upon careful consideration, the Court grants Respondent's motion and dismisses the petition without prejudice.

**DISCUSSION**

In January 2009, Petitioner was found guilty of robbery with a firearm in the Circuit Court of the Fifth Judicial Circuit in and for Marion County, Florida.<sup>1</sup>

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<sup>1</sup> Petitioner's underlying criminal case in Marion County Circuit Court is styled as *State v. Simpkins*, No. 2007-cf-3086-A.

Petitioner was sentenced to 20 years in prison. On February 27, 2012, Petitioner challenged his conviction and sentence by filing a § 2254 petition in the Middle District of Florida in *Simpkins v. Secretary, Department of Corrections*, No. 5:12-cv-117-WTH-PRL. The district court dismissed the petition as untimely on June 18, 2014. *See id.* (Dkt. 20). Nearly nine years later, on March 2, 2023, Petitioner initiated this action by filing a second § 2254 petition challenging his conviction and sentence. Dkt. 1. Given that Petitioner has not obtained permission from the Eleventh Circuit Court of Appeals to file a second habeas petition, Respondent moves to dismiss the petition for lack of jurisdiction. Dkt. 12.

Pursuant to 28 U.S.C. § 2244(b)(3)(A), a district court lacks jurisdiction to hear a “second or successive” § 2254 petition absent an order from the appropriate appellate court authorizing the petition’s consideration. “[A] second petition is successive if the first was denied or dismissed with prejudice.” *Candelario v. Warden*, 592 F. App’x 784, 785 n.1 (11th Cir. 2014). Dismissal of a § 2254 petition as untimely constitutes a dismissal with prejudice. *See Patterson v. Sec’y, Fla. Dep’t of Corr.*, 849 F.3d 1321, 1325–26 (11th Cir. 2017) (en banc).

Here, there is no dispute that Petitioner’s first § 2254 petition was dismissed as untimely. Because that dismissal operates as one with prejudice, *see id.*, Petitioner’s instant § 2254 petition is successive, *see Candelario*, 592 F. App’x at 785 n.1. Petitioner does not allege that he applied to the Eleventh Circuit for an

order authorizing the Court to consider his successive petition. This Court is therefore without jurisdiction to hear Petitioner's claims. And because the Court is without jurisdiction, it cannot issue a certificate of appealability. *See Williams v. Chatman*, 510 F.3d 1290, 1295 (11th Cir. 2007).

### **CONCLUSION**

Accordingly, Respondent's Motion to Dismiss, Dkt. 12, is **GRANTED**. Petitioner's § 2254 Petition for Writ of Habeas Corpus, Dkt. 1, is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction. A certificate of appealability is denied, and Petitioner is not entitled to proceed on appeal *in forma pauperis*. The Clerk is directed to enter judgment in favor of Respondent and close this case.

**DONE AND ORDERED** at Tampa, Florida, on July 14, 2023.

/s/ William F. Jung  
**WILLIAM F. JUNG**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**

Petitioner, *pro se*  
Counsel of Record